

IIJ GOOD PRACTICES FOR CENTRAL AUTHORITIES

A set of internationally-recognized good practices to guide the important work of Central Authorities and provide a framework of institutional, legal and practical considerations needed to support durable legal institutions responsible for facilitating international cooperation crucial to combatting terrorism and transnational crime





ABOUT THE IIJ

The **International Institute for Justice and the Rule of Law (IIJ)** is a non-profit, intergovernmental training institute based in Malta, which serves as a regional hub for sustainable, results-driven rule of law-based training and capacity-building activities for justice sector and other stakeholders.

The IIJ's mission is to enhance and strengthen the competencies of criminal justice practitioners and other stakeholders to address terrorism and related transnational criminal activities within a rule of law framework, and to promote co-operation and information exchange on a national, regional and international basis. The IIJ was established in 2014 by twelve founding member states and is one of three Global Counterterrorism Forum (GCTF)-inspired institutions.

For more information on the *IIJ Good Practices for Central Authorities*, the IIJ Global Central Authorities Initiative, or other IIJ-led initiatives and capacity-building programs, email info@theiiij.org or visit www.theiiij.org. For more information about the Global Counterterrorism Forum, visit www.thegctf.org.



The International Institute for Justice and the Rule of Law
Old University Building, St. Paul Street
Valletta, VLT 1216, Malta
www.theiiij.org
twitter.com/iijmalta

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INTRODUCTION

The modern system of international cooperation in transnational criminal matters is undergirded by two primary mechanisms: extradition and mutual legal assistance. These are the principal means by which cooperation in transnational criminal matters is requested and afforded, and essential in addressing transnational crimes, including terrorism, through a rule of law framework. Under the modern international legal framework, these activities are undertaken and facilitated by Central Authorities, the national bodies responsible for making, receiving and executing requests for mutual legal assistance and extradition, or transmitting such requests to national competent authorities for execution. Central Authorities play crucial roles in operationalizing effective cooperation among international law enforcement and judicial authorities to address the destabilizing forces of transnational crime and terrorism.

The *IIJ Good Practices for Central Authorities*¹ are designed to guide the important work of these institutions and set forth the institutional, legal and practical considerations needed to create and support durable legal institutions. The *IIJ Good Practices for Central Authorities* support implementation of relevant United Nations Security Council Resolutions² and

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² Relevant United Nations Security Council Resolutions include, but are not limited to, [United Nations Security Council Resolution 2178 on Threats to International Peace and Security Caused by Terrorist Acts \(UNSCR 2178\)](#) (S/RES/2178, 24 September 2014), which calls on States to afford one another the greatest measure of

elucidate Good Practice Nine of the Global Counterterrorism Forum's (GCTF) *Rabat Memorandum of Good Practices for Effective Counterterrorism Practice in the Criminal Justice Sector*³, which calls for practices and procedures to encourage international cooperation in counterterrorism matters.

The *III Good Practices for Central Authorities* also complement, and provide a foundation for, a range of tools developed by the United Nations Office of Drugs and Crime⁴ that address specific challenges faced by Central Authorities, including templates for drafting mutual legal assistance requests, sharing points of contact for central and competent authorities, and obtaining electronic evidence from foreign jurisdictions. Together, these good practices and tools serve as a comprehensive toolkit for Central Authorities.

The ten top-line good practices are as follows:

1. Each country should establish and designate a single Central Authority to facilitate international cooperation in criminal matters through mutual legal assistance and extradition.
2. A Central Authority should be adequately resourced and properly staffed with specialized and well-trained legal experts so that it may carry out its functions effectively.
3. A Central Authority should be able to communicate directly with other Central Authorities.

assistance in connection with criminal investigations or proceedings relating to the financing or support of terrorist acts, particularly acts related to foreign terrorist fighters (FTF), including assistance in obtaining evidence in their possession necessary for the proceedings; *United Nations Security Council Resolution 2322 on Threats to International Peace and Security Caused by Terrorist Acts (UNSCR 2322)* (S/RES/2322, 12 December 2016), aimed at strengthening international judicial cooperation in terrorism cases, including through mutual legal assistance and extradition, and specifically calls on States to designate mutual legal assistance and extradition Central Authorities or other relevant criminal justice authorities and ensure that such authorities have adequate resources, training and legal authority, in particular for terrorism related offences; and *United Nations Security Council Resolution 2396 on Threats to International Peace and Security Caused by Terrorist Acts (UNSCR 2396)* (S/RES/2396, 21 December 2017), which builds on UNSCR 2178's measures to detect and counter the threat posed by FTFs with a focus on *returning* FTFs, and emphasizes the need for countries to comply with existing obligations regarding international judicial cooperation in terrorism-related criminal investigations and proceedings.

³ Global Counterterrorism Forum (GCTF), *Rabat Memorandum of Good Practices for Effective Counterterrorism Practice in the Criminal Justice Sector* (2012), which provides a non-exhaustive list of recommended good practices for an effective, rule of law-based criminal justice sector response to terrorism.

⁴ *United Nations Office on Drugs and Crime (UNODC) Mutual Legal Assistance Request Writer Tool* (2018, version 2.1.1); *UNODC Online Directories of Competent National Authorities*; *UNODC Practical Guide for Requesting Electronic Evidence Across Borders* (publication pending in 2018); *UNODC Manual on Mutual Legal Assistance and Extradition* (2012); *UNODC Manual on International Cooperation for the Purposes of Confiscation of Proceeds of Crime* (2012).

4. A Central Authority should be able to transmit and receive mutual legal assistance requests directly to and from other Central Authorities.
5. A Central Authority should maintain confidentiality of mutual legal assistance and extradition requests to protect the integrity of investigations and prosecutions.
6. A Central Authority should be empowered to take action on or coordinate the execution of requests from and to international counterparts for mutual legal assistance.
7. A Central Authority should serve to ensure that requests for mutual legal assistance from domestic law enforcement and judicial authorities are sufficient and comply with the terms of the applicable law, treaty or convention before such requests are transmitted.
8. A Central Authority should be able to facilitate the judicial aspect of extradition requests and follow the status of such requests.
9. A Central Authority should be able to ensure that extradition requests from domestic law enforcement and judicial authorities are sufficient and comply with the terms of the applicable law, treaty or convention before such requests are transmitted.
10. A Central Authority should not serve to inhibit other informal cooperation by and/or between governmental law enforcement entities.

Explanatory notes under each of the good practices provide additional guidance for consideration and implementation.

States are encouraged to use these non-binding *III Good Practices for Central Authorities* when establishing or reviewing their national architecture for international judicial cooperation, while recognizing that implementation must be consistent with applicable international law, as well as national law and regulations, and with consideration of the varied histories, legal systems, and resources among States.

III GOOD PRACTICES

FOR CENTRAL AUTHORITIES

1. Each country should establish and designate a single Central Authority to facilitate international cooperation in criminal matters through mutual legal assistance and extradition.

Central Authorities, the national entities responsible for mutual legal assistance and extradition, are the engines for international cooperation under the modern international legal framework and are essential to effectuating cooperation among international law enforcement authorities.

Countries are encouraged to establish and designate a single Central Authority in order to concentrate legal expertise, experience and resources; to reduce bureaucracy and overlapping authority; and to ensure visibility and accountability of incoming and outgoing requests. Central Authorities should ensure they are not isolated within their governments, but rather empowered to work and coordinate directly with other relevant institutions. It is a good practice for a Central Authority to be able to contribute to developing domestic legislation relevant to mutual legal assistance and extradition.

Where countries choose to join regional criminal information sharing platforms, countries are encouraged to designate their Central Authority as the point of contact for such platforms. Countries should designate their Central Authority in their domestic law, bilateral treaties, and multilateral conventions. United Nations Security Council Resolution 2322⁵, and multilateral conventions such as the *United Nations Convention Against Corruption*⁶ and the *United Nations Convention Against Transnational Organized Crime*⁷, expressly call upon each member state to designate a Central Authority within their government to facilitate mutual legal assistance and extradition.

⁵ *Supra* n. 2.

⁶ United Nations General Assembly, *United Nations Convention Against Corruption (UNCAC)* (A/58/422, 31 October 2003), entered into force 14 December 2005, which covers the promotion of integrity and accountability within each country and the support of international cooperation and technical assistance between States Parties.

⁷ United Nations General Assembly, *United Nations Convention against Transnational Organized Crime (UNTOC)* (A/RES/55/25, 15 November 2000), entered into force 29 September 2003, which calls for enhanced international cooperation to counter transnational organized crime through the domestic criminalization of offences; frameworks for extradition, mutual legal assistance and law enforcement cooperation; and the promotion of training and technical assistance for building or upgrading the necessary capacity of national authorities.

2. A Central Authority should be adequately resourced and properly staffed with specialized and well-trained legal experts so that it may carry out its functions effectively.

It is not merely enough to establish an office that is called a Central Authority, it must be able to function effectively. Without proper resources, dedicated expert and administrative personnel, established practices and procedures, and efficient case tracking and management, the work of a Central Authority will be ineffective due to the high volume and complex legal issues involved in facilitating mutual legal assistance and extradition. While staffing needs will vary, experienced and well-trained practitioners should be assigned to the Central Authority for a significant period of time to ensure effectiveness, professional development, and institutional expertise and continuity. The Central Authority should further be encouraged to provide its staff, prosecutors, and investigators general and openly accessible guidelines on the applicable mutual legal assistance and extradition procedures.

3. A Central Authority should be able to communicate directly with other Central Authorities.

In order to rapidly seek and provide assistance and build trust, direct communication between Central Authorities is essential. Many complex legal issues involved in mutual legal assistance and extradition require international counterparts to have direct discussions in order to explain legal requirements and overcome legal barriers to cooperation. The requesting Central Authority should consider sending a draft request to the receiving Central Authority in complex cases or where the relationship between the two Central Authorities is new or developing to allow the receiving Central Authority to begin reviewing the request expeditiously. Moreover, direct communication between Central Authorities permits international counterparts to discuss the status of pending requests and to seek to overcome challenges that may arise in executing such requests. Such direct communication can often be more effectively made and expedited via email, fax and telephone, rather than traditional methods such as diplomatic channels or traditional mail. Regular, direct and informal bilateral discussions on the overall status of outstanding mutual legal assistance requests can also provide a helpful approach to building relationships and trust and can assist in the prioritization of requests. Stationing a liaison magistrate or legal attaché in other jurisdictions where possible can also be a useful tool to build relationships.

4. A Central Authority should be able to transmit and receive mutual legal assistance requests directly to and from other Central Authorities.

Investigations and prosecutions in modern criminal cases, such as those that involve terrorism or cybercrime, demand quick action and cooperation between national authorities. The electronic transfer of requests should be considered. This is especially so in cases involving cybercrime and/or cases in which electronic evidence is sought as this evidence may not be preserved if it is not secured in a timely manner. A flexible and functional approach should be encouraged. The use of diplomatic channels can delay or prevent effective investigations and the collection of evidence for use in court, and therefore should be discouraged.

5. A Central Authority should maintain confidentiality of mutual legal assistance and extradition requests to protect the integrity of investigations and prosecutions.

In order to provide effective assistance and maintain trust, it is important that Central Authorities ensure that mutual legal assistance and extradition requests it receives are kept confidential to the degree possible (according to its national law) to protect the integrity of foreign investigations and prosecutions. Premature disclosure of a request can disrupt a sensitive investigation, including inadvertent notification to the targets of the investigations who could take steps to frustrate investigative efforts by hiding or destroying evidence, moving the proceeds of crime, or fleeing the jurisdiction. Accordingly, a Central Authority should take steps to treat each request as a confidential matter, including seeking the enactment and enforcement of laws that punish those who improperly disclose a pending request. If the receiving Central Authority is required under its own domestic law to notify a party of a request, it should notify the sending Central Authority promptly and in advance to avoid compromising an on-going criminal investigation. To the extent possible, the sending Central Authority should consult with the receiving Central Authority to check on their legal requirements and modify the mutual legal assistance request accordingly. Central Authorities should note, however, that there is no guarantee of confidentiality for preservation requests issued to Communications Service Providers (CSPs), as many CSPs notify the relevant customer when such a request is made to access their data, and in many jurisdictions, a Central Authority may be required to show cause for a request for non-disclosure.

6. A Central Authority should be empowered to take action on or coordinate the execution of requests from and to international counterparts for mutual legal assistance.

A key component of an effective Central Authority is its ability to act with authority to ensure the prompt execution of requests. If a Central Authority lacks authority to act on requests sent by foreign partners, then efforts at effective cooperation will be frustrated. Central Authorities should, therefore, be empowered to the fullest extent of the law by their national government in a way that permits them to execute requests directly when it is within their competence to do so. If they lack legal authority to execute the request directly, Central Authorities should coordinate with, and direct if necessary, the competent entities within their government to execute requests. A Central Authority should also have avenues open to them to appeal the decision issued by its domestic authorities in charge of executing a request for mutual legal assistance.

7. A Central Authority should serve to ensure that requests for mutual legal assistance from domestic law enforcement and judicial authorities are sufficient and comply with the terms of the applicable law, treaty or convention before such requests are transmitted.

Mutual legal assistance is a legally intensive endeavour and requires requests to be compliant with relevant treaties and various legal requirements, including requirements under national and international law. A good practice is for the sending Central Authority, in advance of sending a request, to consult with the requested Central Authority about their laws concerning disclosure. Central Authorities should be staffed by legal experts who are able to ensure that each request being sent to a foreign counterpart complies with both the domestic laws and international treaties or conventions relevant to the request. The development of standard templates and checklists for mutual legal assistance requests by the Central Authority can assist in ensuring the completeness of requests prepared by local prosecutors or other judicial officials. Establishing simple case-tracking systems for existing requests and prioritization of incoming and outgoing requests can be a useful tool for an effective Central Authority. Requests should establish clearly how the evidence sought is relevant and related to the criminal investigation and should articulate clearly what assistance is being sought to help ensure that such evidence can be used in court in the requesting Central Authority. Ensuring expert review of requests prior to sending greatly facilitates the quality and speed of international cooperation in criminal matters.

8. A Central Authority should be able to facilitate the judicial aspect of extradition requests and follow the status of such requests.

A key component of an effective Central Authority is its ability to act with authority to ensure the prompt execution of requests. Extradition proceedings typically involve a judicial phase for which legal expertise is vital. If a Central Authority lacks authority to act on the judicial aspect of extradition requests sent by foreign partners, then efforts at effective cooperation will be frustrated. Central Authorities should, therefore, be empowered by their national government in a way that permits them to facilitate the judicial aspect of extradition. Central Authorities should also be able to act as a hub or node of coordination within the government to follow the status of pending extradition requests and regularly advise their international counterparts of developments.

9. A Central Authority should be able to ensure that extradition requests from domestic law enforcement and judicial authorities are sufficient and comply with the terms of the applicable law, treaty or convention before such requests are transmitted.

Extradition is a legally intensive endeavour and requires that requests for extradition are compliant with relevant treaties and domestic law, including requirements under national and international law. Central Authorities should be staffed by legal experts whose review of extradition requests prior to sending greatly facilitates the quality and speed of international cooperation in criminal matters.

10. A Central Authority should not serve to inhibit other informal cooperation by and/or between governmental law enforcement entities.

Some forms of assistance will require, according to the domestic legal system or the international obligations of the receiving state, formal requests for mutual legal assistance. Where formal mutual legal assistance is not required, Central Authorities should encourage, where possible under their state's legal system, the use of informal channels of law enforcement sharing, such as the use of police to police channels or between financial intelligence units. The use of informal communication channels should be encouraged in cases where the request for assistance does not involve any restriction on the fundamental rights of citizens. Central Authorities should be able to discern when formal versus informal channels to gather evidence or provide assistance are appropriate, and provide assistance through formal mutual legal assistance channels without inhibiting assistance through informal law enforcement channels. To promote visibility and transparency, where

appropriate, it is advisable to keep the Central Authority apprised of informal contacts to promote deconfliction, to reduce duplication of efforts, and to protect the integrity and purpose of the cooperation sought.

CONCLUSION

The *III Good Practices for Central Authorities* are intended to inform and guide States as they establish or review their national architecture facilitating international judicial and law enforcement cooperation. The need for enhanced international cooperation in the fight against terrorism and transnational crime remains crucial, and Central Authorities serve as the engines for such cooperation. Central Authorities require sufficient support and resourcing, and must be empowered, to perform these critically important functions, and in so doing, operationalize the international treaty framework to help States address terrorism and transnational crime through a rule of law framework.



The International Institute for Justice and the Rule of Law
University of Malta – Valletta Campus, Old University Building
St. Paul Street, Valletta, VLT 1216, Malta
+356 (356) 2122 6147
www.theijl.org
twitter.com/ijlmalta